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No. 1966

IN THE

Supreme Court of the United States

October Term, 1970

JOSEPH L. BOSVATH, Petitioner

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

ATTORNEY FOR PETITIONER:
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The Respondent states that the district court disbelieved petitioner (II Tr. 157) and concluded that the confession was voluntarily made and that petitioner fully understood his constitutional rights. The record, as the court of appeals noted, fully supports this conclusion.

It should be noted that the district court did not rule on the first, and crucial, confession of June 4. Its holding was specifically limited to the second confession of June 5:

II Tr. 159:

> "THE COURT: * * * I hold very specifically that this was a voluntary statement, at least the statement made on June 5 was a voluntary statement and the motion is denied in all aspects"

Yet, the second confession, of June 5, was clearly subject to the "taint" of the first confession of June 4. [See *United States* v *Bayer*, 331 US 532, 540 (1947).] And no ruling was made on the voluntariness of the first confession.

The record does not, as Respondent asserts, "fully support" the district court's "conclusion." Rather it directly contradicts Respondent's statement that

> (T)he federal agents denied making any threats or promises to petitioner or that any were made in their presence on either of these occasions . . .

FBI Agent Michael Murray testified:

I Tr. 33-4:

> "Q: Any threats or promises of any kind made on June 4, 1968 by someone else in your presence?
>
> A: I did hear mention on one occasion of one of the police officers mentioned to him that his girlfriend could be released if he furnished information at that time.
>
> Q: Do you recall what police officer made that statement?
>
> A: I do not.
>
> Q: When do you recall that remark being made, at what point in time?
>
> A: I arrived at the Holdup Bureau after I learned that he was arrested and a short time later they did bring him in there. There were a number of detectives in the room. It was very confused, a lot of confusion at that time and that's when I heard it at that point."

• • •

I Tr. 37:

> Q: Now you said, you told Mr. O'Leary that someone made the remark that his girlfriend could or would be released?
>
> A: Yes, sir, I heard some conversation about that.

Q: Was that in response to a question by Mr. Horvath of the officers?

A: I don't know. I can't say. I do not know how that came up.

Q: Do you know that he requested to be taken to Ford Hospital for some medication?

A: I recall something along those lines . . ."

Respondent then states:

> The state police officer who questioned petitioner on June 4 denied that he made or heard any promise or threats concerning petitioner's girl friend or petitioner's need for methadone treatment . . .

However, there was a very subtle, and not too hidden, implication that the girlfriend would be released upon receipt of a confession.

Detective Sergeant Thomas Barbour, of the Detroit Police Department, testified:

II Tr. 51:

> "Q: And what, if anything, was said by yourself with respect to this particular girl or anyone else in your presence that you can recall?
>
> A: As near as I can recall we inquired of the defendant, Mr. Horvath, had his girlfriend ever been arrested before. Did she have any previous record and when he told us no, we said with the offense she was charged with, I think we told him there wasn't too much to worry about her then."

• • •

II Tr. 60-1:

> "Q: Now you say that there was a conversation or some discussion about what would happen to his girl friend Mickey?
>
> A: It's not too clear but I think it did come up sometimes during the conversation, yes.
>
> Q: And would you say that came up before or after he made a statement to Special Agent Murray?

A: That came up before."

These promises were fulfilled (II Tr. 107-9, 112).

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

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January 13, 1971